

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

CLIFTON DODD,)	
)	
Plaintiff,)	
)	
)	CIV-14-835-F
v.)	
)	
LT. STRAUBS,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner who appears *pro se*, filed this civil action pursuant to 42 U.S.C. § 1983. The matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Plaintiff's Motion for Leave to Proceed In Forma Pauperis (Doc. # 7) pursuant to 28 U.S.C. § 1915 was granted on September 16, 2014. See Order Granting Leave to Proceed In Forma Pauperis (Doc. # 8). Plaintiff was directed to pay an initial partial filing fee of \$7.85 on or before October 6, 2014.

As of this date, the Court's records show that Plaintiff has failed to pay the required initial partial filing fee in this action, show cause in writing for his failure to pay the initial partial filing fee, or request an extension of time within which to pay the initial partial filing fee. On September 24, 2014, Plaintiff filed a "Show Cause Petition" in which he requested leave to proceed without prepayment of the initial partial filing fee. However, in this pleading Plaintiff represented that he was indigent, although he admitted that he has a prison job. Plaintiff's request was denied as Plaintiff had not shown his inability to pay the

minimal, required fee, which represented 20 percent of the average monthly deposits in Plaintiff's prison accounts for the six-month period immediately preceding the filing of the Complaint. See Order (Doc. # 10).

Due to Plaintiff's failure to pay the initial partial filing fee, the expiration of the time given Plaintiff for such payment, and the absence of evidence that Plaintiff has insufficient income to pay the initial partial filing fee, the action is subject to dismissal without prejudice to refiling. See Kennedy v. Reid, 208 Fed. Appx. 678, 2006 WL 3616710 (10th Cir. Dec. 13, 2006)(unpublished op.)(finding no abuse of discretion in district court's dismissal without prejudice of § 1983 action due to litigant's failure to timely pay initial filing fee). Moreover, Plaintiff's lack of interest in complying with the Court's Orders combined with the Court's attempt to manage and control its caseload warrant a dismissal of the cause of action without prejudice. Brandenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980)(*per curiam*).

RECOMMENDATION

Based on the foregoing findings, it is recommended that Plaintiff's cause of action be dismissed without prejudice to refiling due to Plaintiff's failure to pay the required initial partial filing fee as directed or to show cause for nonpayment. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by November 12th, 2014, in accordance with 28 U.S.C. § 636 and LCvR 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United

States of America, 950 F.2d 656 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 21st day of October, 2014.


GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE